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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Impact of arms transfers on the enjoyment of human rights

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

In its resolution 32/12, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights to prepare a report, in consultation with States, United Nations agencies and other relevant stakeholders, on the impact of arms transfers on the enjoyment of human rights, and to present it to the Council at its thirty-fifth session, in order to provide States and other relevant stakeholders with elements to assess the relationship between arms transfers and human rights law that may guide them to strengthen efforts to effectively protect human rights. The present report is submitted pursuant to that request.

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I. Introduction

1. In its resolution 32/12, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a report on the impact of arms transfers on the enjoyment of human rights in order to provide States and other relevant stakeholders with elements to assess the relationship between arms transfers and human rights law that may guide them to strengthen efforts to effectively protect human rights.[1]

2. In preparing the report, OHCHR sought input from Member States, international and regional organizations, national human rights institutions and non-governmental organizations.[2] In addition to containing information received from these entities, the report draws on a diverse range of public sources, including from United Nations human rights mechanisms and reports by scholars, practitioners and civil society organizations.

3. In the report, OHCHR first highlights some key aspects of the impact of arms transfers, including the potential or actual use of transferred arms, on the enjoyment of human rights before setting out the relevant international and regional law framework. It then suggests elements that may be used by States and other stakeholders to assess the relationship between arms transfers and human rights, including in the context of the human rights risk assessments that should be carried out pursuant to article 7 of the Arms Trade Treaty and regional arms transfer instruments.

II. Impact of arms transfers on the enjoyment of human rights

4. In resolution 32/12, the terms "arms" and "transfer" are used without qualification.[3] In paragraph 1 of the resolution, the Council expressed deep concern that arms transfers, particularly those that are illicit or unregulated, may seriously undermine the human rights of individuals.

5. Arms transfers and the potential or actual use of transferred arms may have a direct or indirect, positive or negative, impact on the enjoyment of human rights. In a positive sense, States may acquire and/or deploy arms in the discharge of their responsibility to protect individuals in their jurisdictions and establish or re-establish peace and security.[4]

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[1] See also Human Rights Council resolutions 24/25, 26/16 and 29/10.

[2] Contributions were received from Albania, Argentina, Colombia, Guatemala, El Salvador, Madagascar, Mauritius, Saudi Arabia, Sweden and Switzerland. Contributions were also received from the United Nations Development Programme (UNDP), the United Nations Institute for Disarmament Research, Action on Armed Violence (AOAV), Americans for Democracy and Human Rights in Bahrain, Amnesty International, Child Soldiers International, Conectas Human Rights, Control Arms, the Groupe de recherche et d'information sur la paix et la sécurité, the Omega Research Foundation, the Romanian Institute for Human Rights, Saferworld, the Small Arms Survey, Terre des Hommes/Kindernothilfe/Brot für die Welt, the Women's International League for Peace and Freedom (WILPF) and Hiram Catunambo Azevedo. All contributions will be made available on the OHCHR website.

[3] Conventional arms include hand grenades and manually emplaced anti-personnel and anti-vehicle mines; law enforcement weaponry that fire lethal ammunition and, for instance, riot launchers and related ammunition of all kinds, including tear gas grenades and cartridge-launched projectiles; kinetic-impact projectiles; projectile electrical weapons; directed energy weapons; shotgun-fired birdshot and buckshot; and water cannons and other riot control-type vehicles; and other types of conventional means of warfare, such as flamethrowers, directed energy weapons and bayonets. Non-conventional arms are those for which the transfer is prohibited by the 1968 Treaty on the Non-Proliferation of Nuclear Weapons, the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and the 1992 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction. "Transfer" generally covers the export, import, sale, lease or loan of arms from the jurisdiction and/or control of one State to that of another.

[4] See also the contributions of El Salvador and Sweden.

The three pillars of the United Nations (peace and security, human rights and development) are closely intertwined, and the existence of peace and security is an important enabling condition for the promotion and protection of human rights.

6. However, arms transfers and their subsequent potential or actual use can also have a negative impact on the enjoyment of human rights. In its resolution 32/12, the Human Rights Council acknowledged that millions of people around the world are affected by serious human rights violations and abuses committed or facilitated by the irresponsible use of arms. In their contributions to the present report, some States have noted that the trade in and the excessive and uncontrolled proliferation of arms have a direct negative impact on the enjoyment of human rights.[7]

7. The Office of Disarmament Affairs of the Secretariat has cautioned that the irresponsible transfer of arms can destabilize security in a region,[8] which has serious ramifications for human rights protection.[9] The diversion of arms and illicit or unregulated arms transfers can contribute to the widespread and uncontrolled availability of arms, and raise the risk that the arms will be directed to or come into the hands of those who use, threaten to use or are likely to use them to commit human rights violations or abuses.[10] The transfer of arms to States with weak governance and security capacities may also have a negative impact in the light of the heightened risk of diversion of such arms.[11] Furthermore, arms transfers to States that do not regulate civilian access to small arms and light weapons according to international standards pose a risk that such weapons may be used by individuals to commit or facilitate human rights violations and abuses, such as sexual and gender-based violence.[12]

8. Arms transfers can also impair socioeconomic development and human rights through the diversion of the recipient State's finances away from health, education and other social sectors.[13] This "opportunity cost" was recognized by the drafters of the Charter of the United Nations, Article 26 of which sets out as an objective to promote the establishment and maintenance of peace and security with the least diversion for armaments of the world's human and economic resources.

9. Arms may be used in conflict and non-conflict situations to commit or facilitate acts that violate a wide range of human rights, from the right to life, liberty and security of the person to the right to be free from slavery and from torture and other cruel, inhuman or

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[7] See the contributions of Albania, Argentina and Switzerland.

[8] See www.un.org/disarmament/convarms/armstrade.

[9] See also the contribution of UNDP, the guidelines for international arms transfers in the context of General Assembly resolution 46/36H of 6 December 1991, para. 20, and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, initial elements, para. 1 (1).

[10] See the Arms Trade Treaty, the third preambular paragraph and art. 11. See also resolution 2 adopted at the thirty-first International Conference of the Red Cross and Red Crescent on a four-year action plan for the implementation of international humanitarian law.

[11] See the contribution of UNDP. See also, for example, Amnesty International, "Iraq: turning a blind eye: the arming of popular mobilization units" (4 January 2017).

[12] See the contribution of UNDP, citing the report of the United Nations High Commissioner for Human Rights on human rights and the regulation of civilian acquisition, possession and use of firearms (A/HRC/32/21). For the current international standard, see the International Small Arms Control Standard, available from www.smallarmsstandards.org/isacs/0330-en.pdf.

[13] See the contributions of Argentina and UNDP, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, first preambular paragraph, and the Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, criterion eight. See also the report of the Group of Governmental Experts on the relationship between disarmament and development (A/59/119), para. 18, and the Geneva Declaration on Armed Violence and Development (see A/63/994, annex I, para. 1).

degrading treatment or punishment.[32] The use or threat of use of arms may also undermine the realization of the rights to freedom of expression, association and peaceful assembly.[33]

10. Not only is there the issue of "opportunity cost", economic, social and cultural rights can also be significantly undermined by the use of arms.[34] Particularly in contexts of armed conflict, such use can lead to the damage, destruction and/or closure of civilian infrastructure such as schools, hospitals, places of work, markets, residential areas, buildings and areas of religious and cultural significance, as well as to a breakdown in basic services.[35] In turn, civilians, including internally displaced persons and refugees, can be deprived of the minimum essential levels of food, health, education, shelter and sanitation. Furthermore, armed conflict and violence disproportionately affect the poorest countries and exacerbate existing poverty, in many instances creating humanitarian emergencies with serious repercussions for the enjoyment of basic economic and social rights. Arms transfers may also heighten and/or prolong existing violence or conflict, with a corresponding impact on human rights.[36]

11. Survivors of arms-related violence with impairments face higher barriers to "effective employment, well-being, and reintegration into community and family life".[37] Survivors may also experience long-term psychological effects that include post-traumatic social impairments, flashbacks, depression, anxiety and fear, suicidal or other forms of self-destructive behaviour, and substance abuse.[38]

12. As highlighted in Human Rights Council resolution 32/12, specific groups of individuals may be particularly vulnerable to violations of their rights as a result of arms transfers.[39] Arms may be used in the commission of, or may facilitate, gender-based violence,[40] including sexual violence.[41] Although men and boys are targets of gender-based violence, including sexual violence, the victims of such violence continue to be predominantly women and girls. As the Committee on the Elimination of Discrimination against Women has noted, the proliferation of conventional arms, especially small arms, including diverted arms from the legal trade, can have a direct or indirect effect on women as victims of conflict-related gender-based violence, as victims of domestic violence and also as protesters or actors in resistance movements.[42] Moreover, the proliferation of arms tends to have a negative impact on women's equality and bargaining power within the household, their mobility and their political participation.[43] It can also detrimentally affect women's access to, and use of, resources and business and employment opportunities.[44]

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[32] See the contributions of Albania, Colombia, El Salvador, Guatemala, Mauritius and Sweden.

[33] See the contribution of Amnesty International.

[34] See the contributions of Argentina and Amnesty International.

[35] See the contributions of Amnesty International and Control Arms.

[36] See the contributions of Switzerland and WILPF.

[37] Centre for Humanitarian Dialogue and Inter-Parliamentary Union, *Missing Pieces: A Guide for Reducing Gun Violence through Parliamentary Action* (2017), p. 63.

[38] Ibid. See also the contribution of Argentina.

[39] See also the contributions of Albania, El Salvador and Switzerland.

[40] Gender-based violence is understood as any harmful act directed against individuals or groups of individuals on the basis of their gender and includes sexual violence, domestic violence and trafficking. See also the contribution of Switzerland.

[41] Sexual violence encompasses any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, acts to traffic, or other acts directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. Sexual violence takes multiple forms and includes rape, sexual abuse, forced pregnancy, forced sterilization, forced abortion, forced prostitution, trafficking, sexual enslavement, forced circumcision, castration and forced nudity. See, for example, the analytical and conceptual framing of conflict-related sexual violence prepared in 2011 by United Nations Action against Sexual Violence in Conflict.

[42] General recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, para. 32.

[43] See contributions of WILPF.

[44] Ibid. See also South-Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, *Gender and SALW in South East Europe: Main Concerns and Policy Responses*

13. There is a long-standing awareness of the link between the global trade in conventional weapons, including small arms and light weapons, and grave violations committed against children in conflict situations.[17] The relationship between the widespread availability of small arms and light weapons and the recruitment and use of children in conflict is also well known.[18] In his latest report on children and armed conflict, the Secretary-General noted the substantial impact of current conflicts on children, including in relation to their recruitment and use, sexual abuse and exploitation, killing and/or maiming and displacement, as well as the destruction of their schools and homes.[19] The Special Representative to the Secretary-General on Children and Armed Conflict recently drew attention to the fact that girls continue to be disproportionately affected by conflict, including as targets of rape and other forms of sexual violence, in the recruitment and use by armed forces, in situations of displacement and as a consequence of being disproportionately exposed to trafficking. Girls also face additional impediments to their right to education as their schools may be specifically targeted for attack, and as a result of being confined to the home owing to the security situation and/or being given additional household responsibilities.[20]

III. Measuring the impact of arms transfers on the enjoyment of human rights

14. The collection of data has enabled the measurement of some of the consequences of the use of certain types of arms and, over time, the identification of patterns and trends. For example, according to the Small Arms Survey, 79 per cent of deaths caused by armed violence occur in non-conflict settings, while an estimated 2 million people in non-conflict settings live with firearm-related injuries.[21] Between 2000 and 2015, the average number of violent deaths worldwide was estimated to be at 535,000 annually.[22] Conflict-related deaths accounted for 17 per cent of that number.[23] Firearms were used in 50 per cent of homicides and 32 per cent of conflict-related deaths.[24] In Global Burden of Armed Violence 2015: Every Body Counts, it was estimated that firearms were used in 44.1 per cent of all violent deaths during the period 2007–2012, which translates to an annual global average of nearly 197,000 deaths.

15. Moreover, according to research carried out by Action on Armed Violence (AOAV) there was a 48 per cent increase in deaths and injuries from explosive weapons between 2011 and 2015.[25] Improvised explosive devices caused the most harm, followed by air-launched weaponry and ground-launched weaponry. Explosive weapons were used in 566

(2006) and the progress report of the Special Rapporteur on the prevention of human rights violations committed with small arms and light weapons (E/CN.4/Sub.2/2004/37), paras. 46-52.

[17] Report of the Special Representative of the Secretary-General for Children and Armed Conflict (A/68/267), para. 92.

[18] Ibid. See also Child Soldiers International, *Louder than Words: an Agenda for Action to End State Use of Child Soldiers* (2012) and Oxfam Novib, Terre des Hommes, Kindernothilfe, Save the Children Deutschland and World Vision Deutschland, *Small Arms in the Hands of Children: German Arms Exports and Child Soldiers* (Terre des Hommes, Kindernothilfe, Save the Children Deutschland and World Vision Deutschland, 2007).

[19] Report of the Secretary-General on children and armed conflict (A/70/836-S/2016/360). See also, for example, UNICEF, *Missing Back to School: How 2016 became the Worst Year for Syria's Children* (March 2017).

[20] See the annual report of the Special Representative of the Secretary-General for Children and Armed Conflict (A/HRC/34/44), paras. 9-14.

[21] Aaron Karp, Glenn Dietz, "A million of unwanted: non-lethal firearm violence", in *Small Arms Survey 2012: Moving Targets* (Cambridge University Press, 2012), pp. 79-105.

[22] Small Arms Survey, "Monitoring trends in violent deaths", Research Note No. 59 (September 2016), p. 2.

[23] Ibid.

[24] Small Arms Survey, "Firearms and violent deaths", Research Note No. 61 (October 2016) p. 1.

[25] See the contribution of AOAV.

incidents, which resulted in 188,325 deaths and injuries.[14] Civilians constituted 77 per cent of the resulting deaths and injuries, and 59 per cent of those civilians were killed or injured by improvised explosive devices.[15] Armed actors made up the remaining 23 per cent of deaths and injuries.[16] AOAV also collected information on the use of explosive weapons in populated and unpopulated areas between 2011-2015. In populated areas, 91 per cent of deaths and injuries were among civilians. That contrasts with 33 per cent of civilian deaths and injuries in unpopulated areas.[17] According to the International Campaign to Ban Landmines-Cluster Munition Coalition, in 2015 there were reportedly 417 casualties resulting from cluster munitions, the vast majority of which occurred during cluster munitions attacks.[18] Casualties from cluster munition remnants were recorded in at least eight countries, and civilians accounted for 97 per cent of the casualties recorded in 2015.[19]

16. That data contributes to increasing awareness of the impact of arms transfers on the enjoyment of human rights. There is, however, limited data available in relation to all types of arms, and all consequences, which prevents a comprehensive understanding of the impact on human rights. There is a need for a greater, systematic collection of information regarding all types of arms and the many ways in which their transfer and use can affect the whole spectrum of human rights. Better data will ultimately help to develop a stronger understanding of the relationship between arms transfers and human rights, with beneficial implications for strengthening human rights protection, including by informing and aiding the effective implementation of the Arms Trade Treaty and relevant regional instruments.

17. The adoption of the 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 16 on peace, justice and strong institutions, represents a significant step towards recognizing the importance of arms control to sustainable development and related human rights protection. While the transfer and subsequent use of arms are relevant to several of the targets set out under Goal 16, they are most immediately relevant to targets 16.1, which requires States to significantly reduce all forms of violence and related death rates everywhere, and 16.4, which requires States to significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime.[40] The indicators that are being elaborated and agreed for target 16.4 will be one important avenue through which information on the human rights impact of the flow of illicit arms can be systematically collected, analysed and ultimately measured over time.

18. Also contributing to understanding about the human rights impact of arms are the efforts by civil society to develop methodologies to monitor arms transfers and gather information for the implementation of the Arms Trade Treaty. The Arms Trade Treaty Monitor Risk Watch Tool, for example, aims to survey, synthesize and make available information from a wide range of sources that monitor and report on human rights violations and risks related to the use of weapons in the context of the Treaty.[41] The tool is intended to help inform and guide licensing authorities as part of their national assessment process, and to serve as a resource for civil society organizations and others in their review of effective treaty implementation.[42]

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[14] AOAV, *Patterns of Harm. Five Years of AOAV Explosive Violence Data (2011-2015)* (2 August 2016). See also Graduate Institute of International and Development Studies and the United Nations Institute for Disarmament Research The International Community and IEDs: Building coordinated processes and responses (June 2015), citing various reports and findings by AOAV.

[15] AOAV, Patterns of Harm.

[16] Ibid.

[17] See the contribution of AOAV.

[18] *Cluster Munition Monitor 2016* (2016), p. 2.

[19] Ibid.

[40] See targets 16.2 and 16.5-16.7, as well as targets 5.2 and 11.7.

[41] Control Arms, *ATT Monitor Report 2016*, pp. 52 ff.

[42] Ibid.

IV. Legal framework

19. In its resolution 32/12, the Human Rights Council recalled the principles and provisions relating to international human rights law and international humanitarian law, and to the promotion of responsible action by States, as contained in the Arms Trade Treaty, as well as in other relevant instruments. The present section outlines the principles of due diligence and the responsibility for aiding or assisting in the commission of an internationally wrongful act in international human rights law and public international law, respectively, before discussing, in brief, the international and regional arms transfer regimes and guidance from international human rights mechanisms.

A. Principles of due diligence and responsibility for aiding or assisting

20. International human rights law provides for the principle of due diligence, by which a State may be held responsible for its failure to take reasonable steps to prevent, investigate, punish and ensure reparations for human rights violations and abuses committed by private persons or entities, including companies and non-State armed groups.[43]

21. In public international law more generally, and as articulated in article 16 of the International Law Commission's draft articles on responsibility of States for internationally wrongful acts, a "State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State."[44] In line with that provision, a State that transfers arms with knowledge that the arms will aid or assist another State to commit a serious violation of international human rights law may be held responsible for failing to exercise due diligence by taking the necessary preventive measures.

22. In its commentary to the draft articles on responsibility of States for internationally wrongful acts, the International Law Commission expressly considered the issue of arms transfer:[45]

> a State may incur responsibility if it assists another State to circumvent sanctions imposed by the Security Council or provides material aid to a State that uses the aid to commit human rights violations. In this respect, the General Assembly has called on Member States in a number of cases to refrain from supplying arms and other military assistance to countries found to be committing serious human rights violations. Where the allegation is that the assistance of a State has facilitated human

[43] See, for example, Human Rights Committee general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 8, and Committee on Economic, Social and Cultural Rights general comments No. 14 (2000) on the right to the highest attainable standard of health, para. 51, and No. 15 (2002) on the right to water, para. 31. See also Inter-American Court of Human Rights, *Velásquez-Rodríguez v. Honduras*, judgment of 29 July 1988, paras. 172 and 174; European Court of Human Rights, *Akkoç v. Turkey*, judgment of 10 October 2000, paras. 77-78; the preliminary report of the Special Rapporteur on the prevention of human rights violations committed with small arms and light weapons (E/CN.4/Sub.2/2003/29), paras. 36-43; and European Court of Human Rights, *Tagar v. Italy*, decision on admissibility of 18 October 1995. Moreover, the Human Rights Committee, in its draft general comment on the right to life, has suggested that the transfer of weapons may fall within the scope of article 6 of the International Covenant on Civil and Political Rights.

[44] The International Court of Justice has held that article 16 has attained the status of customary international law. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*, p. 43, para. 147.

[45] Paragraph (9) of the commentary to draft article 16 of the draft articles on responsibility of States for internationally wrongful acts, *Yearbook of the International Law Commission, 2001*, vol. II (Part Two), p. 67.

rights abuses by another State, the particular circumstances of each case must be carefully examined to determine whether the aiding State by its aid was aware of and intended to facilitate the commission of the internationally wrongful conduct.

B. Arms transfer regimes

23. States have taken steps to regulate arms transfers through a variety of binding and non-binding instruments at the international and regional levels. These instruments make human rights a primary consideration for States when assessing the lawfulness of a potential arms transfer.

1. Arms Trade Treaty

24. The Arms Trade Treaty is the first international, legally binding instrument to govern specifically the transfer of conventional arms, their key parts and components and ammunition/munitions, and to incorporate human rights as a standard to restrict such transfers, with the express purpose of reducing human suffering. An important feature of the Treaty is to make respect for and protection of human rights imperative in any determination of whether a proposed arms transfer should proceed. In the preamble of the Treaty, the signatories acknowledged "the security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms" and recalled that "civilians, particularly women and children, account for the vast majority of those affected by armed conflict and armed violence". Moreover, the Treaty explicitly incorporates in its preamble the principle, already set out in the Charter of the United Nations, of "the least diversion for armaments of the world's human and economic resources", thereby acknowledging that an increase in arms expenditure diverts resources from health, education and other social sector spending.

25. Articles 6, 7 and 8 constitute the key provisions of the Arms Trade Treaty. Such is the significance of articles 6 and 7 that signatory or ratifying States may declare that they will provisionally apply them, pending the entry into force of the Treaty. Article 6 (3) prohibits, in absolute terms, any transfer of conventional arms when the State party has knowledge, at the time of authorization, that the arms would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a party. A transfer of arms in violation of Security Council arms embargoes or other international obligations is also prohibited.

26. When a proposed export is not prohibited under article 6, the exporting State must still assess, "in an objective and non-discriminatory way", the "potential" that the weapons would contribute to, or undermine, peace and security, and that they could be used to commit or facilitate offences under international conventions related to terrorism and transnational organized crime or a serious violation of international human rights law or international humanitarian law (art. 7). Article 7 (4) explicitly provides that the exporting State must take into account the risk of the potential export items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children. Arms export decisions in relation to any and every export of conventional arms, parts and components or ammunitions/munitions covered by the Arms Trade Treaty are therefore subject to a human rights risk assessment.

27. The text of the Arms Trade Treaty does not define which acts constitute "a serious violation of international human rights law". In that regard, the criteria most commonly used in evaluating the seriousness of human rights violations, as evidenced by the practice of United Nations human rights mechanisms and other relevant international and regional bodies, include the character of the right violated, the nature or scale of the violation, the impact of the violation and the type of victim.[69]

[69] Geneva Academy of International humanitarian Law and Human Rights, "What amounts to 'a serious violation of international human rights law'? An analysis of practice and expert opinion for the

28. In accordance with article 8 of the Arms Trade Treaty, the importing State "shall take measures to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting State to assist" it in carrying out its human rights risk assessment. When, after making the assessment, and considering available mitigating measures, the exporting State determines that there is an overriding risk of any of these negative consequences, it shall not authorize the export. Also, significantly, article 7 (7) "encourages" the exporting State to reassess an authorization if it "becomes aware of new information".

2. Regional arms transfers instruments

29. Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment sets out the obligation of States members of the European Union to assess export licence applications against eight criteria. Criterion two requires States to respect human rights in the country of final destination and provides that:

> Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States shall: (a) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression; (b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the military technology or equipment, to countries where serious violations of human rights have been established.

30. Article 6 (3) of the Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (2006) stipulates that a "transfer shall not be authorised if the arms are destined to be used ... for the violation of international humanitarian law or infringement of human and peoples' rights and freedoms, or for the purpose of oppression".

31. The Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and All Parts and Components That Can Be Used for Their Manufacture, Repair and Assembly, which came into force on 8 March 2017, has as one of its purposes to "combat armed violence and ease the human suffering caused in Central Africa by the illicit trade and trafficking in small arms and light weapons". It provides, in article 5 (5), that authorization for the transfer of such arms "shall be denied by the competent national body if [they] are to be or might be used to commit violations of international human rights law or international humanitarian law".[47]

C. Relevant guidance from human rights mechanisms

32. In paragraph 29 of its general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, the Committee on the Elimination of Discrimination against Women noted that the robust and effective regulation of arms, in addition to appropriate control over the circulation of existing and often illicit conventional

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purposes of the 2013 Arms Trade Treaty", Academy Briefing No. 6 (August 2014), in which the authors examine, inter alia, the treatment of "seriousness" in concluding observations of United Nations treaty bodies (pp. 27-30). See also section 3.2.6 of the user's guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment (2009), available from http://data.consilium.europa.eu/doc/document/ST-10858-2015-INIT/en/pdf.

[47] See also the following non-binding instruments, which similarly establish human rights as a critical consideration in export decisions: the Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons (2002); the Organization of American States Model Regulations for the Control of Brokers of Firearms, Their Parts and Components and Ammunition (2003), art. 5 (1); the Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel (2005), art. 1; and the Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons (2005).

arms, including small arms, is part of the prevention of conflict and all forms of violence as required by the Convention on the Elimination of All Forms of Discrimination against Women. To that end, the Committee recommended that States parties address the gendered impact of international transfers of arms, especially small and illicit arms, including through the ratification and implementation of the Arms Trade Treaty.[48]

33. Since the adoption of general recommendation No. 30, the Committee on the Elimination of Discrimination against Women has consistently raised the issue of arms transfers with exporting countries. It has recommended that States parties, inter alia: (a) monitor the impact of the misuse and illicit trade of small arms and light weapons on women, including those living in conflict zones, and ensure that arms producing corporations monitor and report on the use of their arms in violence against women;[49] (b) ensure that comprehensive and transparent assessments of the impact of arms exports on women's rights are made before approving export licences, particularly to countries where arms may directly or indirectly be used to violate the rights of women and girls;[50] (c) integrate a gender dimension into strategic dialogues with recipient countries;[51] (d) ensure that new legislation to regulate the export of arms includes a strong and robust gender-specific perspective;[52] and (e) conduct rigorous, transparent and gender-sensitive risk assessments, in accordance with the Arms Trade Treaty.[53]

34. The Committee on the Rights of the Child has been particularly attentive to the potential impact of arms transfers on children's rights. In that regard, it has made a series of recommendations to States parties that are noteworthy, namely to: (a) continue and strengthen efforts to regularly report on, and make public, information on weapon exports, and take steps to include information on the end-users of such exports in public reports; (b) ensure the greatest transparency regarding the transfer of arms; (c) enact legislation to prohibit the sale or smuggling, export and/or transit of arms to countries where children are known to be or may potentially be recruited or used in hostilities; (d) consider seeking assistance from regional and international organisations to apply the criteria of relevant regional code of conduct on arms export, and undertake a comprehensive analysis on the impact on children of weapons exports; (e) continue to raise awareness through information campaigns on the dangers of storing arms and weapons; (f) take measures to ensure that those responsible for controlling the sale, export or transit of arms are made aware of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and are guided, during the relevant decision-making processes, by its provisions; and, (g) consider ratifying or expedite ratification of the Arms Trade Treaty.[54]

35. The Committee on Economic, Social and Cultural Rights has recently recommended to a State party that it conduct thorough risk assessments prior to granting licences for arms exports and refuse or suspend such licences when there is a risk that arms could be used to violate human rights, including economic, social and cultural rights.[55]

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[48] See also CEDAW/C/ERI/CO/5, para. 9 (c).

[49] See CEDAW/C/CHE/CO/4-5, para. 17.

[50] See CEDAW/C/NLD/CO/6, para. 46 (a). See also CEDAW/C/DEU/CO/7-8, para. 28.

[51] See CEDAW/C/FRA/CO/7-8, para. 23.

[52] See CEDAW/C/SWE/CO/8-9, para. 27 (h).

[53] See CEDAW/C/FRA/CO/7-8, para. 23.

[54] See CRC/C/SWE/CO/5, para. 54, CRC/C/OPAC/NLD/CO/1, para. 24, CRC/C/OPAC/BRA/CO/1, para. 34, CRC/C/OPAC/TKM/CO/1, para. 24, CRC/C/DEU/CO/3-4, para. 77, CRC/C/OPAC/CHN/CO/1, para. 34, CRC/C/OPAC/UKR/CO/1, para. 26, CRC/C/OPAC/MNE/CO/1, para. 25, CRC/C/OPAC/MDA/CO/1, para. 15, CRC/C/OPAC/TUN/CO/1, para. 18, CRC/C/OPAC/GBR/CO/1, para. 33, and CRC/C/OPAC/USA/CO/1, para. 34. See also CRC/C/OPAC/BEL/CO/1, para. 21, in which the Committee on the Rights of the Child recommended that the State party review its domestic law on small arms trade with a view to abolishing any trade in war materiel with countries where persons under 18 years of age take a direct part in hostilities, either as members of the national armed forces or as members of non-State armed groups.

[55] See E/C.12/GBR/CO/6, para. 12 (c).

36. The Special Rapporteur on the human rights of internally displaced persons recommended, in relation to the conflict in the Syrian Arab Republic, that the international community, humanitarian actors and donors take measures to counter further militarization of the conflict and resulting displacement by restricting arms transfers.[56] Also in the context of that conflict, the Independent International Commission of Inquiry on the Syrian Arab Republic concluded that:

> The desperation of the parties to the conflict has resulted in new levels of cruelty and brutality, bolstered by an increase in the availability of weapons. Increased arm transfers hurt the prospect of a political settlement to the conflict, fuel the multiplication of armed actors at the national and regional levels and have devastating consequences for civilians.[57]

The Commission recommended that the international community counter the escalation of the conflict by restricting arms transfers, especially given the clear risk that the arms will be used to commit serious violations of international human rights or humanitarian law.[58]

37. A number of relevant recommendations have been made by States during the universal periodic review, including that States ensure that no arms are traded with regions that deploy child soldiers; review legislation and introduce a prohibition on the sale and transit of arms to countries where children may potentially be recruited or used in hostilities; ratify and implement the Arms Trade Treaty; and consolidate efforts for the ratification of the Treaty with the aim of consolidating common international norms to regulate international trade in conventional arms, ammunition and parts and components, contributing to peace and security, reducing human suffering and promoting cooperation and transparency.[59] Of those recommendations, seven have been accepted and two have been noted.

V. Elements to assess the relationship between arms transfers and international human rights law

38. The present section contains suggestions for how States and other relevant stakeholders could assess the relationship between arms transfers and human rights law with a view to guiding them to strengthen efforts to effectively protect human rights.[60] In particular, the suggestions could form the basis of the human rights risk assessments that must be conducted under regional arms transfer instruments and pursuant to article 7 of the Arms Trade Treaty. They could also provide a framework for requests for information by the exporting State to the recipient State under article 8 of the Treaty. Their incorporation into national law, policies and operating procedures may assist in ensuring a consistent application of human rights criteria in all decisions on arms exports, as well as in improving accountability and transparency. Consideration may also be given to using the suggestions in the future development of a set of indicators to identify and measure the impact of arms transfers on the enjoyment of human rights.

39. The suggestions have been grouped into three main categories, namely: the recipient State's commitment and capacity to comply with and implement its international human rights obligations, its respect for human rights and its capacity to control the use of

[56] See A/67/931, para. 78 (b).

[57] Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (A/HRC/23/58, para. 157).

[58] Ibid., para. 164 (d).

[59] A/HRC/15/6, A/HRC/15/11, A/HRC/18/3, A/HRC/26/3, A/HRC/30/9, A/HRC/30/11, A/HRC/30/16, A/HRC/32/13 and A/HRC/33/15.

[60] See, inter alia, the contributions of Amnesty International, Child Soldiers International, Control Arms, GRIP, Omega Research Foundation, Saferworld and WILPF. See also module six of the Arms Trade Treaty implementation toolkit prepared by the Office of Disarmament Affairs of the Secretariat; Amnesty International, *How to Apply Human Rights Standards to Arms Transfer Decisions* (2008); and International Committee of the Red Cross, Arms Transfer Decisions: Applying International Humanitarian Law and International Human Rights Law Criteria — A Practical Guide (2016).

transferred arms in accordance with international human rights. While any human rights risk assessment should be open to considering other elements in order to remain relevant as situations evolve, the following are considered the most critical:

(a) Commitment and capacity of the recipient State to comply with and implement its human rights law obligations:

(i) Ratification of international and/or regional human rights instruments;

(ii) Existence of a national legal framework that provides human rights protection in accordance with the international and/or regional instruments to which it is a party;

(iii) Existence of legislative and other measures to address violence against women, gender-based violence and violence against children;

(iv) Existence of a competent, independent, impartial judiciary and independent human rights monitoring bodies, including a national human rights institution;

(v) Training of the armed forces in international humanitarian law and integration of international humanitarian law into military doctrine, manuals and instructions;

(vi) Training of police and other law enforcement officials in international human rights law and integration of international human rights law into law enforcement manuals, instructions and operating procedures;

(vii) Cooperation with international and regional human rights mechanisms and international judicial mechanisms, including the International Criminal Court;

(b) Respect for human rights in the recipient State:

(i) Past and present record of respect for international human rights law, particularly during military and/or law enforcement operations having recourse to arms;

(ii) Past and present record of gender-based violence and violence against women, including when committed with or facilitated by the type of arms that are the subject of the proposed transfer;

(iii) Past and present record of violence against children and/or the recruitment of children into, and their use by, the armed forces or non-State armed groups, including committed with or facilitated by the type of arms that are the subject of the proposed transfer;

(iv) Past and present record of significant and persistent pattern or patterns of discrimination or oppression against individuals or groups, including minorities;

(v) Where serious human rights violations or abuses have occurred over recent years, the nature and range of the human rights violated, the scale and impact of the violations or abuses, the type of victims and the extent to which the violations or abuses constitute a pattern or emerging patterns;

(vi) Past and present record of measures to end human rights violations and abuses, ensure accountability for violations, prevent their reoccurrence and provide effective remedy to victims;

(c) Capacity of recipient State to control use of transferred arms in accordance with international human rights law:

(i) Ratification of international and/or regional arms transfer instruments, including the Arms Trade Treaty;

(ii) Effective national arms control system, legislation and procedures in place that accord with international and regional arms transfer standards, such as those key components of an arms control regime provided for in articles 5 and 8-14 of the Arms Trade Treaty, and include prohibitions on the transfer of arms that may be used in the commission or facilitation of violations and abuses of international

human rights law, including violence against women, gender-based violence and violence against children;

(iii) Extent to which the type and quantity of arms that are the subject of the proposed export are commensurate with the intended use stated by the recipient State.

40. In order to be effective, a human rights risk assessment must be based on the objective, non-discriminatory, verifiable and systematic collection of accurate and reliable information. A wide array of sources may be needed to build a comprehensive understanding of the immediate and long-term human rights risks associated with a proposed export. In addition to information that can be requested from the recipient State under article 8 of the Arms Trade Treaty, sources of information relevant for the application of human rights criteria for arms transfer decisions may include documentation from:

(a) United Nations human rights bodies, including the Human Rights Council, its universal periodic review mechanism and the special procedure mandate holders, the human rights treaty bodies, the United Nations commissions of inquiry and fact-finding missions;

(b) OHCHR;

(c) Other relevant United Nations organs (such as the Security Council), programmes and funds (including UNDP, the Office of the United Nations High Commissioner for Refugees and the United Nations Children's Fund), the International Court of Justice and ad hoc courts and tribunals;

(d) The International Criminal Court;

(e) Regional human rights bodies;

(f) The secretariat of the Arms Trade Treaty;

(g) International and national non-governmental organizations, research institutes and think tanks with expertise in international human rights law, international humanitarian law and the arms trade;

(h) National diplomatic missions;

(i) National human rights institutions, sources of military doctrine, manuals and instructions of the recipient State;

(j) International and national media outlets.

41. All human rights risk assessments should be conducted on a case-by-case basis, taking account of the gender dimension of arms transfers and the potential or actual use of the transferred arms. They should integrate a forward-looking approach that looks at both the past and present human rights record of the recipient State and at the anticipated risks to the level of enjoyment of all human rights. A forward-looking assessment would also take into account the potential impact of the "long shelf-life of much military equipment".[61] It should, therefore, consider: (a) the durability of the arms subject to export authorization, as arms often outlast political regimes and can be used in unintended or unforeseen ways over the long term; (b) cyclical patterns that may signal a return to heightened risks of disturbance and human rights violations or abuses, even if the situation has recently stabilized; and (c) any events or circumstances that, even if seemingly unrelated to human rights violations, may result in a deterioration of the human rights situation.[62]

VI. Conclusions and recommendations

42. **Arms transfers and the potential or actual use of transferred arms may have a direct or indirect, positive or negative, impact on the enjoyment of civil, political,**

[61] Control Arms, *ATT Monitor Report 2016*, p. 62.

[62] See the contribution of Saferworld.

economic, social and cultural rights. On one hand, arms may be acquired and/or deployed by States in the discharge of their obligation to protect individuals within their jurisdictions and establish or re-establish peace and security. On the other hand, the proliferation of arms, their diversion, illicit or unregulated arms transfers, transfers to States with insufficient regulation of civilian access to arms and the subsequent use or potential use of arms, may undermine national, regional and global peace and security and contribute to serious human rights violations and abuses. Specific groups of individuals, including women and children, are particularly vulnerable to violations and abuses of their rights as a result of the transfer and use of arms.

43. Systematic collection of information about the transfer and use of all types of arms and their impact on the whole spectrum of human rights should be ensured. In that regard, disaggregation of the types of arms according to the seven categories identified in the United Nations Register of Conventional Arms would be useful. The collection of such information would enable a better understanding of the relationship between arms transfers and human rights, and could guide effective actions to strengthen human rights protection.

44. One avenue for information collection will be target 16.4 of the Sustainable Development Goals, and its indicator. In order to achieve a comprehensive understanding, it would also be important for States to engage in regular, public reporting on their decisions regarding arms transfer authorizations and actual transfers. In addition, relevant United Nations mechanisms could carry out systematic monitoring and reporting on the ways that transfers and the use of arms affect human rights, and should be provided with the appropriate resources to do so.

45. Civil society is contributing to building understanding about the human rights impact of arms transfers, including through its efforts to develop methodologies to monitor, gather, analyse and make available information on arms transfers. It also plays an important role in encouraging State compliance with the international law governing arms transfers, including by highlighting those transfers that have had detrimental human rights impact and exploring avenues for accountability. Civil society should continue to make efforts in this regard, with the support of the international community.

46. The international treaties regulating arms transfers, including the Arms Trade Treaty and regional arms transfer instruments, make human rights a primary consideration in decisions on whether to authorize an arms transfer. All efforts should continue to be made, including by States, United Nations entities and civil society, to advance accession to and/or ratification of the Treaty and regional arms transfer instruments.

47. Efforts should also continue to be made to ensure compliance with these instruments and with applicable international law, including international human rights law, in particular the principles of due diligence and the responsibility for aiding or assisting in the commission of an internationally wrongful act. United Nations human rights mechanisms have made a number of important recommendations on ways to address the human rights impact of arms transfers and the subsequent use of arms. States should follow up and implement those recommendations.

48. In the present report, some elements have been suggested for how to assess the relationship between arms transfers and human rights in order to strengthen efforts to effectively protect human rights. Those suggestions may, among other things, also aid in the implementation of obligations under the Arms Trade Treaty and regional arms transfer instruments, ensure that human rights considerations are consistently taken into account and improve accountability and transparency in States' decisions on arms transfer authorizations. They could inform the development of a set of indicators to identify and measure the impact of arms transfers on the enjoyment of human rights.

49. To be effective, human rights risk assessments should be based on the objective, non-discriminatory, verifiable and systematic collection of accurate and reliable information. They should be carried out on a case-by-case basis and take full account of the gender dimension of arms transfers. Effectiveness could also be strengthened through the sharing of good practices.

50. To further enhance effectiveness, States should ensure that national control system bodies, as well as other government bodies involved in arms transfer decision-making processes, have the capacity to carry out human rights risk assessments, including through the inclusion of human rights experts in their staff.